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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,357	06/25/2003	Jeff Braun	021572-000710US	2549

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EXAMINER	
JONES, HEATHER RAE	

ART UNIT	PAPER NUMBER
2621	

NOTIFICATION DATE	DELIVERY MODE
07/10/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/603,357	BRAUN ET AL.	
	Examiner	Art Unit	
	HEATHER R. JONES	2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 April 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8 and 15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8 and 15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 June 2003 and 07 April 2009* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-8 and 15 have been considered but are moot in view of the new ground(s) of rejection.

2. Applicant's arguments filed April 7, 2009 have been fully considered but they are not persuasive.

The Applicant argues that Suzuki et al. fails to meet the limitations of claim 1 because Suzuki et al. discloses cues being automatically created representing motion information that corresponds to physical movements of musicians or instruments, whereas the claim is directed to a manual designation of a pattern or sequence of notes. The Examiner respectfully disagrees. Suzuki does disclose cues representing physical movements, but the physical movements mark positions in time where the motions correspond to the music being reproduced, for example, the physical movements of the drum sticks being hit on the drum is being recorded (Figs. 7A-7E; col. 13, 11-26). Furthermore, with this setup the guitar player's fingers are being recorded according to their movement from playing the notes on the guitar, thereby creating different cues. Therefore, the physical movements are being corresponded to the music and Suzuki also discloses in col. 13, line 28 – col. 15, lines 38 where the operator can edit the motion and scene components (cues) according to the their liking, thereby allowing the operator to include beginning and end points of a guitar riff if one so

desired. Therefore, Suzuki et al. meets the claimed limitations and the rejection is maintained.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3-8, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (U.S. Patent 6,245,982).

Regarding claim **1**, Suzuki et al. discloses a method for playing back an audio presentation with an accompanying visual presentation, the method comprising: accepting a first signal from a user input device to designate a cue at a first point in a sequence of audio waveform data (Fig. 6 – two types of cues can be seen being used to designate information, the arrows and bars; col. 12, line 30 – col. 13, line 3 – the operator can edit the cues; col. 13, line 28 – col. 15, lines 38 - motion and scene components (cues) can be edited according to the user's liking); accepting a second signal from the user input device to designate a point in the sequence of audio waveform data as an end point (Fig. 6 – two types of cues can be seen being used to designate information, the arrows and bars, start and end cues can be seen at each of the bars; col. 12, line 30 – col. 13, line 3 – the operator can edit the cues) detecting a cue (motion component) during

playback of the audio presentation (col. 17, lines 39-49 - playback; col. 18, lines 14-26 – motion components are stored in a motion component database); and using the cue to modify a visual presentation in synchronization with the audio presentation (col. 18, lines 14-26 – the motion waveform is changed according to the motion components). However, Suzuki et al. fails to disclose marking the start and end of a guitar riff. Official Notice is taken that the cues can be edited to indicate a start and end point of a guitar riff. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included cues indicating the start and end points of a guitar riff in order for the visual effect of the audio or scene to correspond accordingly to create a more enhancing display during the guitar riff.

Regarding claim **3**, Suzuki et al. discloses all the limitations as previously discussed with respect to claim 1 including that the cue is included in a file separate from the audio presentation (col. 17, lines 39-49 - each motion component is stored in the motion database, which is separate from the music file).

Regarding claim **4**, Suzuki et al. discloses all the limitations as previously discussed with respect to claim 1 including the step of using the cue includes substeps of determining a cue type; and modifying the visual presentation in accordance with the determined cue type (col. 17, lines 39-49; col. 18, lines 14-26 - the motion component may represent different things and therefore needs to

be analyzed and then it is determined how to change the corresponding motion waveform accordingly).

Regarding claim **5**, Suzuki et al. discloses all the limitations as previously discussed with respect to claims 1 and 4 including that the cue type includes an indication of volume level (col. 18, lines 14-26 - volume).

Regarding claim **6**, Suzuki et al. discloses all the limitations as previously discussed with respect to claims 1 and 4 including that the cue type includes an indication of frequency band strength (col. 17, lines 50-67).

Regarding claim **7**, Suzuki et al. discloses all the limitations as previously discussed with respect to claims 1 and 4 including that the cue type includes an indication of a beat in a song (col. 17, lines 50-67 – beats are part of the tempo of the music).

Regarding claim **8**, Suzuki et al. discloses all the limitations as previously discussed with respect to claims 1 and 4 including that the cue type includes an indication of sub-beats (col. 17, lines 50-67 – sub-beats are part of the tempo of the music).

Regarding claim **15**, Suzuki et al. discloses all the limitations as previously discussed with respect to claims 1 and 4 including that the cue type includes an indication of MIDI information (Fig. 11; col. 16, lines 21-49).

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. as applied to claim 1 and 18, and further in view of Nishitani et al. (U.S. Patent 7,161,079).

Regarding claim **2**, Suzuki et al. discloses all the limitations as previously discussed with respect to claim 1, but fails to disclose that the cue is included embedded with the audio presentation.

Referring to the Nishitani et al. reference, Nishitani et al. discloses a method wherein the cues are included embedded with the audio presentation (Fig. 6; col. 8, lines 29-37).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have embedded the cues with the audio presentation as disclosed by Nishitani et al. instead of in a separate file as disclosed by Suzuki et al. in order to easily correlate the audio sample with the cue rather than having to read two separate files and trying to correlate them. Also, embedding the cues into the audio presentation allows the cues to always be accessible because if they were stored in a separate location the other location may be unavailable for some reason.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEATHER R. JONES whose telephone number is (571)272-7368. The examiner can normally be reached on Mon. - Thurs.: 7:00 am - 4:30 pm, and every other Fri.: 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Heather R Jones
Examiner
Art Unit 2621

HRJ
July 2, 2009

/Thai Tran/
Supervisory Patent Examiner, Art Unit 2621